

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

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|--|----------|---|
| <b>IN RE: PHILIPS RECALLED CPAP,<br/>BI-LEVEL PAP, AND MECHANICAL<br/>VENTILATOR PRODUCTS<br/>LITIGATION</b> | <b>:</b> | <b>Master Docket: Misc. No. 21-mc-1230-JFC</b>  |
|  | <b>:</b> |   |
|  | <b>:</b> | <b>MDL No. 3014</b>   |
|  | <b>:</b> |   |
| <b>This Document Relates to:</b>   | <b>:</b> | <b>SHORT FORM COMPLAINT FOR<br/>PERSONAL INJURIES, DAMAGES,<br/>AND DEMAND FOR JURY TRIAL</b> |

MILDRED GOBERT

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Plaintiff(s) incorporate(s) by reference the Amended Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial filed in *In re Philips Recalled CPAP, Bi-Level PAP, and Mechanical Ventilator Products Litigation*, MDL No. 3014, Master Docket Misc. No. 21-mc-1230 (the “Master Long Form Complaint”). This Short Form Complaint adopts the allegations, claims, and requested relief as set forth in the Master Long Form Complaint. As necessary herein, Plaintiff(s) may include: (a) additional claims and allegations against Defendants; and/or (b) additional claims and allegations against other Defendants not listed in the Master Long Form Complaint.

Plaintiff(s) further allege(s) as follows:

**I. DEFENDANTS**

1. Plaintiff(s) name(s) the following Defendants in this action:

Koninklijke Philips N.V

Philips North America LLC

Philips RS North America LLC

Aerocare Home Medical, Inc.

Aerocare Home Medical Equipment, Inc.

Healthline Medical Equipment, LLC

**II. PLAINTIFF(S)**

2. Name of Plaintiff(s):

Mildred Gobert

3. Name of spouse of Plaintiff (if loss of consortium claim is being made):

Not Applicable

4. Name and capacity (*i.e.*, executor, administrator, guardian, conservator, etc.) of other Plaintiff, if any:

Not Applicable

5. State(s) of residence of Plaintiff(s) (if the Recalled Device user is deceased, residence at the time of death):

Mildred Gobert - State of Texas

**III. DESIGNATED FORUM**

6. Identify the forum (United States District Court and Division) in which the Plaintiff would have filed in the absence of direct filing:

Plaintiff's action was involuntarily removed from the 165<sup>th</sup> Judicial District Court of Harris County, Texas to the United States District Court for the Southern District of Texas on October 4, 2022 before transfer into this MDL.

**IV. USE OF A RECALLED DEVICE**

7. Plaintiff used the following Recalled Device(s):

|   |   |
|---|---|
| <input type="checkbox"/> <i>E30 (Emergency Use Authorization)</i> | <input type="checkbox"/> <i>Dorma 500</i>   |
| <input type="checkbox"/> <i>DreamStation ASV</i>                  | <input type="checkbox"/> <i>REMstar SE Auto</i>   |
| <input type="checkbox"/> <i>DreamStation ST, AVAPS</i>            | <input type="checkbox"/> <i>Trilogy 100</i>   |
| <input type="checkbox"/> <i>SystemOne ASV4</i>                    | <input type="checkbox"/> <i>Trilogy 200</i>   |
| <input type="checkbox"/> <i>C-Series ASV</i>                      | <input type="checkbox"/> <i>Garbin Plus, Aeris, LifeVent</i>                                    |
| <input type="checkbox"/> <i>C-Series S/T and AVAPS</i>            | <input type="checkbox"/> <i>A-Series BiPAP Hybrid A30 (not marketed in U.S.)</i>                |
| <input type="checkbox"/> <i>OmniLab Advanced +</i>                | <input type="checkbox"/> <i>A-Series BiPAP V30 Auto</i>   |
| <input type="checkbox"/> <i>SystemOne (Q-Series)</i>              | <input type="checkbox"/> <i>A-Series BiPAP A40</i>  |
| <input checked="" type="checkbox"/> <i>DreamStation</i>           | <input type="checkbox"/> <i>A-Series BiPAP A30</i>  |
| <input type="checkbox"/> <i>DreamStation Go</i>                   | <input type="checkbox"/> <i>Other Philips Respironics Device; if other, identify the model:</i> |
| <input type="checkbox"/> <i>Dorma 400</i>                         | _____   |

**V. INJURIES**

8. Plaintiff alleges the following physical injuries as a result of using a Recalled Device together with the attendant symptoms and consequences associated therewith:

- COPD (new or worsening);
- Asthma (new or worsening);
- Other Pulmonary Damage/Inflammatory Response;
- Coughing, sinus issues, headaches and shortness of breath.

**VI. CAUSES OF ACTION/DAMAGES**

9. As to Koninklijke Philips N.V., Plaintiff(s) adopt(s) the following claims asserted in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial, and the allegations and prayer for relief with regard thereto, as set forth therein:

Count I: Negligence

Count II: Strict Liability: Design Defect

Count III: Negligent Design

Count IV: Strict Liability: Failure to Warn

Count V: Negligent Failure to Warn

Count VI: Negligent Recall

~~Count VII: Battery~~

Count VIII: Strict Liability: Manufacturing Defect

Count IX: Negligent Manufacturing

Count X: Breach of Express Warranty

Count XI: Breach of the Implied Warranty of Merchantability

Count XII: Breach of the Implied Warranty of Usability

Count XIII: Fraud

Count XIV: Negligent Misrepresentation

~~Count XV: Negligence Per Se~~

~~Count XVI: Consumer Fraud and/or Unfair and Deceptive Practices Under State Law~~

~~Count XVII: Unjust Enrichment~~

~~Count XVIII: Loss of Consortium~~

~~Count XIX: Survivorship and Wrongful Death~~

~~Count XX: Medical Monitoring~~

Count XXI: Punitive Damages

Count XXII: Other [specify below]\_\_\_\_\_

Physical pain/suffering suffered in the past/future; Physical Disfigurement suffered in the past/future; Physical Impairment suffered in the past/future; Mental Anguish suffered in the past/future; Loss of Opportunity suffered in the past/future; Loss of Enjoyment of Life suffered in the past/future; Amount of Reasonable Medical Expenses necessarily incurred in the past and will be incurred in the future and Loss of any earnings sustained in the past and loss or reduction of earning capacity in the future.

10. As to Philips North America LLC, Plaintiff(s) adopt(s) the following claims asserted in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial, and the allegations and prayer for relief with regard thereto, as set forth therein:

Count I: Negligence

Count II: Strict Liability: Design Defect

Count III: Negligent Design

Count IV: Strict Liability: Failure to Warn

Count V: Negligent Failure to Warn

Count VI: Negligent Recall

~~Count VII: Battery~~

Count VIII: Strict Liability: Manufacturing Defect

Count IX: Negligent Manufacturing

Count X: Breach of Express Warranty

Count XI: Breach of the Implied Warranty of Merchantability

Count XII: Breach of the Implied Warranty of Usability

Count XIII: Fraud

Count XIV: Negligent Misrepresentation

~~Count XV: Negligence Per Se~~

~~Count XVI: Consumer Fraud and/or Unfair and Deceptive Practices Under State Law~~

~~Count XVII: Unjust Enrichment~~

~~Count XVIII: Loss of Consortium~~

~~Count XIX: Survivorship and Wrongful Death~~

~~Count XX: Medical Monitoring~~

Count XXI: Punitive Damages

Count XXII: Other [specify below]\_\_\_\_\_

Physical pain/suffering suffered in the past/future; Physical Disfigurement suffered in the past/future; Physical Impairment suffered in the past/future; Mental Anguish suffered in the past/future; Loss of Opportunity suffered in the past/future; Loss of Enjoyment of Life suffered in the past/future; Amount of Reasonable Medical Expenses necessarily incurred in the past and will be incurred in the future and Loss of any earnings sustained in the past and loss or reduction of earning capacity in the future.

11. As to Philips RS North America LLC, Plaintiff(s) adopt(s) the following claims asserted in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial, and the allegations and prayer for relief with regard thereto, as set forth therein:

Count I: Negligence

Count II: Strict Liability: Design Defect

Count III: Negligent Design

Count IV: Strict Liability: Failure to Warn

Count V: Negligent Failure to Warn

Count VI: Negligent Recall

~~Count VII: Battery~~

Count VIII: Strict Liability: Manufacturing Defect

Count IX: Negligent Manufacturing

Count X: Breach of Express Warranty

Count XI: Breach of the Implied Warranty of Merchantability

Count XII: Breach of the Implied Warranty of Usability

Count XIII: Fraud

Count XIV: Negligent Misrepresentation

~~Count XV: Negligence Per Se~~

~~Count XVI: Consumer Fraud and/or Unfair and Deceptive Practices Under State Law~~

~~Count XVII: Unjust Enrichment~~

~~Count XVIII: Loss of Consortium~~

~~Count XIX: Survivorship and Wrongful Death~~

~~Count XX: Medical Monitoring~~

Count XXI: Punitive Damages

Count XXII: Other [specify below]\_\_\_\_\_

Physical pain/suffering suffered in the past/future; Physical Disfigurement suffered in the past/future; Physical Impairment suffered in the past/future; Mental Anguish suffered in the past/future; Loss of Opportunity suffered in the past/future; Loss of Enjoyment of Life suffered in the past/future; Amount of Reasonable Medical Expenses necessarily incurred in the past and will be incurred in the future and Loss of any earnings sustained in the past and loss or reduction of earning capacity in the future.



12. As to Philips Holding USA Inc., Plaintiff(s) adopt(s) the following claims asserted in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial, and the allegations and prayer for relief with regard thereto, as set forth therein:
13. If additional claims against the Defendants identified in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial are alleged above, the additional facts, if any, supporting these allegations must be pleaded. Plaintiff(s) assert(s) the following additional factual allegations against the Defendants identified in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial:

Not applicable.

14. Plaintiff(s) contend(s) that additional parties may be liable or responsible for Plaintiff(s)' damages alleged herein. Such additional parties, who will be hereafter referred to as Defendants, are as follows (must name each Defendant and its citizenship):

Aerocare Home Medical, Inc. (Texas)  
Aerocare Home Medical Equipment, Inc. (Texas)  
Healthline Medical Equipment, Inc. (Texas)

15. Plaintiff(s) assert(s) the following additional claims and factual allegations against other Defendants named in Paragraph 16 above:

Above defendants failed to use ordinary care in selling a safe product free of defects; failed to warn users Phillips CPAP machines were defective; failed to warn users of the known risk of illness, injury and cancer associated with using defective CPAP devices; represented Phillips CPAP devices were safe; and advised users maintain or care for Phillips CPAP products in a manner that increased the risk of illness, injury or cancer.

WHEREFORE, Plaintiff(s) pray(s) for relief and judgment against Defendants and all such

further relief that this Court deems equitable and just as set forth in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial and any additional relief to which Plaintiff(s) may be entitled.

Respectfully Submitted,

**THE GIBSON LAW FIRM**



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**ATTORNEYS FOR PLAINTIFFS**  
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**CERTIFICATE OF SERVICE**

I certify a copy of the foregoing document was served to all counsel of record via ECF on March 31, 2022.



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Jason A. Gibson